Supreme Court of the United States

OCTOBER TERM, 1959

No. 64

UNITED STATES, APPELLANT,

v.

JAMES GRIGGS RAINES, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA

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[fol. 3] **IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA**

(File Endorsement Omitted)

Civil Action No. 442

UNITED STATES OF AMERICA, PLAINTIFF

v.

JAMES GRIGGS RAINES, DIXON OXFORD, ROSCOE RADFORD, Registrars of Terrell County, Georgia, F. LAWSON COOK, SR., and MRS. F. LAWSON COOK, SR., Deputy Registrars, DEFENDANTS

COMPLAINT—Filed September 4, 1958

The United States of America, Plaintiff, brings this suit against James Griggs Raines, Dixon Oxford, and Roscoe Radford, members of the Board of Registrars of Terrell County, Georgia; F. Lawson Cook, Sr., and Mrs. F. Lawson Cook, Sr., Deputy Registrars, and alleges that:

1. This action is brought under Part IV of the Civil Rights Act of 1957 (P.L. 85-315, 71 Stat. 634, 42 U.S.C. Sec. 1971) to obtain preventive relief against acts and practices by the defendants which would deprive other persons of rights and privileges secured by subsection (a) of 42 U.S.C. 1971, namely the right and privilege of citizens of the United States who are otherwise qualified by law to vote at any election by the people in the State of Georgia to be entitled and allowed to vote at all such elections without distinction of race or color.

2. This Court has jurisdiction of this action under 42 U.S.C. 1971(d), and under 28 U.S.C. 1345.

3. Defendants James Griggs Raines, Dixon Oxford, and Roscoe Radford are the members of the Board of Registrars of Terrell County Georgia, and defendants F. Lawson Cook, Sr., and Mrs. F. Lawson Cook, Sr., are

Deputy Registrars of Terrell County. The defendants aforesaid held the offices previously mentioned at the time the applications by Negro citizens to register to vote which are involved in this Complaint were made or were pending. In their official capacities the defendants [fol. 4] are and have been responsible for the registering in that county of qualified persons who desire to vote. Defendants are citizens of the United States and of the State of Georgia and while discharging the duties of the offices aforesaid were acting under color of law of the State of Georgia.

4. Defendants kept separate records by race as to applicants for registration, and used differently colored cards for white and Negro applicants and registered voters.

5. In the year 1956 the white citizens of voting age in Terrell County, Georgia, numbered approximately 3,233 and the Negro citizens of voting age approximately 5,036. On or about July 20, 1956, the white citizens registered to vote in Terrell County numbered 2,679 while the Negro citizens registered to vote numbered 48.

In the year 1956 the white citizens of voting age in Georgia numbered approximately 1,559,975 and the Negro citizens of voting age approximately 621,576. In that year, the white citizens registered to vote in Georgia numbered approximately 1,057,513, while the Negro citizens registered to vote numbered approximately 156,880.

6. Under the provisions of the Constitution of the State of Georgia, all citizens of the State qualified as to age and residence and not laboring under any of the disabilities named in said Constitution are entitled to register as electors and to vote in all elections in said State who come within either of the two classes therein provided for, namely (1) all persons who are of good character and understand the duties and obligations of citizenship under a republican form of government; or (2) all persons who can pass a literacy test, that is to say, who can correctly read in the English language any paragraph of the Constitution of the United States or of the State of Georgia and correctly write the same in the English language when read to them by any one of the registrars.

7. Under the provisions of the statutes of the State of Georgia, registration is a prerequisite to voting at any election by the people in the State. The statutes pertaining to registration require as a prerequisite to registration to vote that after an applicant applies for registration he shall pass a literacy test if he seeks to qualify on the basis of literacy, or an examination based [fol. 5] upon certain standard questions if he seeks to qualify on the basis of his good character and his understanding of the duties and obligations of citizenship under a republican form of government.

8. The current provision of said registration statutes applicable to the administration of the literacy test is Section 17(a) of the Georgia Voters' Registration Act of 1958, approved March 25, 1958, the pertinent part of which reads as follows:

> "(a) If the applicant applies for registration and seeks to qualify on the basis of literacy, the Board shall submit to him a section of the Constitution of Georgia or of the United States and the applicant shall be required to read it aloud and write it in the English language. If the applicant reads the section intelligibly and writes it legibly, possesses the other necessary qualifications and is not disqualified for any reason, the card shall be marked approved and the applicant shall be considered a registered voter. Otherwise, the registration card shall be marked rejected."

9. On and after the times defendants assumed their offices, they have engaged and are continuing to engage in acts and practices designed and intended to deny the right to vote to Negro citizens of the United States who are otherwise qualified by law to vote at any election by the people in the State of Georgia and Terrell County, solely on account of their race and color. The acts and practices as hereinafter more fully set forth include arbitrary and discriminatory delay in handling applications of Negroes for registration; the arbitrary refusal to register Negroes who demonstrate themselves to be fully qualified to register; and the discriminatory application of more difficult and more stringent registration

standards to Negro applicants from those applied to white applicants.

Said acts and practices were and are further designed and intended by defendants to perpetuate the disparity referred to in paragraph 5 between the registration of white citizens and Negro citizens in the State of Georgia and in Terrell County.

[fol. 6] 10. During the period beginning in October 1956 and extending to February 1958, a number of Negro citizens of Terrell County, Georgia, applied for registration to vote. Among said Negro citizens were the following, who applied on the dates set forth opposite their names:

	Date Applied
Bertha M. Hall	October 27, 1956
Grace Boyd Gibson	November 3, 1956
Marjorie Moore Turner	November 30, 1956
Alice Bynum	December 7, 1956
James H. Reynolds	December 8, 1956
Manuel J. Hall	March 1, 1957
Alford C. McKenzie	March 22, 1957
Edna M. Lowe	November 19, 1957
Janie Breedlove	November 29, 1957
Eddie G. Lowe	December 3, 1957
Davey Louis Gibson	January 10, 1958
Mary Louise Holloway	January 27, 1958

None of the applications of the foregoing individuals was disposed of until April 7, 1958, which date was set by defendants for all of said Negro applicants to appear to seek qualification to register to vote.

11. In March 1958, while the applications referred to in paragraph 10 hereof were pending, a number of white citizens of Terrell County, Georgia, applied to defendants for registration. All the applications of said white citizens were acted upon and approved in less than two weeks. Among said white citizens were the following, the dates of whose applications to register to vote and of the approvals thereof are set forth opposite their names:

	Date Applied	*Date Registered*
R. G. Webb	March 11, 1958	March 22, 1958
Mrs. Louise Blythe	March 11, 1958	March 22, 1958
Ed M. Laing	March 12, 1958	March 22, 1958
William Lee Wall, Jr.	March 18, 1958	March 22, 1958
Dave W. Oxford	March 19, 1958	March 22, 1958
Mrs. Dave W. Oxford	March 19, 1958	March 22, 1958
G. R. Wright, Jr.	March 20, 1958	March 22, 1958
James C. Laye	March 20, 1958	March 22, 1958
John C. Goodman	March 20, 1958	March 22, 1958
Mrs. J. F. McLendon	March 22, 1958	March 24, 1958
Mary J. Reese	March 22, 1958	March 24, 1958
Jack Laing	March 24, 1958	March 24, 1958
Betty C. Laing	March 24, 1958	March 24, 1958

[fol. 7] 12. On March 25, 1958, the Georgia Voters' Registration Act of 1958 became effective. For applicants who do not elect to qualify on the basis of literacy it contains a more difficult and stringent test than was provided under the previous law. Said test, set forth in Exhibit A hereof, contains a list of 30 questions, 20 of which must be correctly answered. The answers to said questions are not set forth in said law.

Under the previous law of Georgia (the Voters' Registration Act of 1949, as amended), for applicants who did not elect to qualify on the basis of literacy provision was made for a less difficult test. Said test, set forth in Exhibit B hereof, contained a list of 30 questions, only 10 of which had to be correctly answered. The answers to 14 of the questions were set forth in the previous law, which made further provision for distribution by the registrars of all the questions and answers to any members of the public.

13. The aforesaid delay in handling the applications of Negro applicants was not accidental, but was for the purpose of depriving them of their right to vote during the period of delay and thereafter; for the further purpose of subjecting them to the more difficult and stringent test of the Georgia Voters' Registration Act of 1958; and for the further purpose of discouraging them and other Negro citizens from attempting to register.

14. On April 7, 1958, the following Negro citizens of the United States and of Terrell County, Georgia, who at that time possessed and now possess all the qualifications and none of the disqualifications under the Constitution and laws of the State of Georgia to register to vote appeared before defendant board members for the purpose of registering to vote, and elected to take the literacy test. They then and there demonstrated to said defendants their ability to read correctly and intelligibly and stood ready to demonstrate to said defendants but were arbitrarily and without legal cause and solely for racial reasons prevented by said defendants from demonstrating their ability to write correctly and legibly, a provision of the Constitution of the State of Georgia or of the United States:

(a) Edna Mae Lowe, who is a teacher of mathematics at Carver High School, Dawson, Terrell County, Georgia, [fol. 8] and holds a Bachelor of Science degree from Fort Valley State College, Fort Valley, Georgia, and a Master of Arts degree in Education from New York University;

(b) Janie Breedlove, who is an elementary school teacher in Terrell County, Georgia, and holds a Bachelor of Science degree from Albany State College, Albany, Georgia;

(c) Davey Louis Gibson, who is a school teacher in Terrell County, Georgia, and holds a Bachelor of Science degree from Albany State College, Albany, Georgia, and is now working for a Master of Arts degree in Elementary School Administration at New York University;

(d) Grace Boyd Gibson, who has been an elementary school teacher in Calhoun County, Georgia, and holds a Bachelor of Science degree from Albany State College, Albany, Georgia.

15. On April 7, 1958, the following Negro citizen of the United States and of Terrell County, Georgia, who at that time possessed and now possesses all the qualifications and none of the disqualifications under the Constitution and laws of the State of Georgia to register to vote, appeared before defendant board members for the purpose of registering to vote, and elected to take the

literacy test. He then and there demonstrated to said defendants his ability to read correctly and intelligibly and to write correctly and legibly a section of the Constitution of the State of Georgia or of the Unitetd States:

Eddie George Lowe, who attended Tuskegee Institute and who is employed at the United States Marine Corps Supply Center, Albany, Georgia.

16. Notwithstanding the fact that the persons named in the preceding two paragraphs were qualified, and demonstrated or stood ready to demonstrate to defendant board members that they were qualified, to register to vote as aforesaid, they were, on April 7, 1958, arbitrarily and without legal cause and solely for racial reasons, rejected and thus prevented from registering and voting—Eddie Lowe because of alleged inability to write correctly and legibly and the other individuals, named in paragraph 14, because of alleged inability to read correctly and intelligibly.

17. Defendants in the administration of the literacy test provided by the Georgia Constitution and law have applied different and more stringent registration standards to Negro applicants from those they applied to white applicants.

[fol. 9] 18. The application of different standards by defendants as aforesaid was not accidental, but was designed and intended by them to discriminate against Negro applicants on account of their race or color.

19. There are reasonable grounds to believe that defendants and their successors will continue to engage in the acts and practices set forth in this Complaint and in other acts and practices for the purposes set forth in paragraph 9 hereof unless enjoined by this Court.

WHEREFORE, Plaintiff prays this Court that after hearing, this Court issue a preliminary and permanent injunction enjoining the defendants, their agents, employees, successors, and all persons in active concert and participation with them from:

(1) following different procedures in the processing or time of processing of applications of Negro citizens to register to vote from the procedures applied to applications of white citizens to register to vote;

(2) failing or refusing, on the ground that the following persons failed to meet the requirements of the literacy test provided by the law of the State of Georgia, to certify to the appropriate county or state official or agency that the said persons are eligible to register to vote in Terrell County: Eddie George Lowe, Edna Mae Lowe, Janie Breedlove, Davey Louis Gibson, and Grace Boyd Gibson.

(3) applying more stringent standards and criteria in the administration of the literacy test or any other test provided by the Constitution and laws of Georgia to Negro applicants in Terrell County from those standards and criteria applied to white applicants for registration.

(4) engaging in any acts, practices, methods, or procedures which discriminate or tend to discriminate against any applicant for registration because of said applicant's race or color.

Plaintiff also prays this Court for any such further relief that the interest of justice requires or that this Court may direct.

By direction of the Attorney General of the United States

/s/ W. Wilson White
Assistant Attorney General

/s/ Frank O. Evans
United States Attorney

EXTRACTS FROM GEORGIA VOTERS' REGISTRATION ACT APPROVED MARCH 25, 1958

"Section 2. Notwithstanding any other provisions of this law, any person who was qualified and registered to vote in the 1956 general election shall not be required to re-register under the terms of this law unless such person shall have become or becomes disqualified to vote, by reason of having been purged from the list of registered voters or for any other reason whatsoever, in which event such person shall, in order to become registered to vote, reregister under the terms of this law."

"Section 17. When an applicant appears before the Board of Registrars for examination, the Board shall proceed as hereinafter provided.

"(a) If the applicant applies for registration and seeks to qualify on the basis of literacy, the Board shall submit to him a section of the Constitution of Georgia or of the United States and the applicant shall be required to read it aloud and write it in the English language. If the applicant reads the section intelligibly and writes it legibly, possesses the other necessary qualifications and is not disqualified for any reason, the card shall be marked approved and the applicant shall be considered a registered voter. Otherwise, the registration card shall be marked rejected. If the applicant states that solely because of physical disability, he is unable to read or write, the section shall be read to him by any member of the Board and he shall be called upon to give a reasonable interpretation thereof. The interpretation shall be in the applicant's own words, giving words the significance ordinarily attached to them by a layman of average intellect and attainments. If, in the opinion of the Board, the applicant gives such a reasonable interpretation, possesses the other necessary qualifications and is not disqualified for any reason, the card shall be marked approved and the applicant shall be considered a registered voter. Otherwise, the registration card shall be marked rejected.

"(b) If the applicant applied for registration and seeks

to qualify on the basis of his good character and his [fol. 11] understanding of the duties and obligations of citizenship under a republican form of government, he shall be given an examination based upon a standard list of questions as hereinafter provided."

"Section 18. The examination which the registrars shall submit to an applicant who claims the right to register on the basis of good character and understanding of the duties and obligations of citizenship under a republican form of government, shall be based upon a standard list of questions, and the questions on this list and no others shall be submitted to such applicant. In order to ascertain whether an applicant is eligible for qualification as a voter in this classification, the registrars shall orally propound to him the 30 questions on the standardized list set forth thereinafter. If the applicant can give correct answers to 20 of the 30 questions as they are propounded to him, possesses the other necessary qualifications and is not disqualified in any other way, the card shall be marked approved and the applicant shall be considered a registered voter. Otherwise, the registration card shall be marked rejected."

"Section 19. The standard list of questions which shall be propounded to each applicant is as follows:

"1. What is a republican form of government?
"2. What are the names of the three branches of the United States government?
"3. In what State Senatorial District do you live and what are the names of the county or counties in such District?
"4. What is the name of the State Judicial Circuit in which you live and what are the names of the counties or county in such Circuit?
"5. What is the definition of a felony in Georgia?
"6. How many Representatives are there in the Georgia House of Representatives and how does the Constitution of Georgia provide that they be apportioned among the several counties?
"7. What does the Constitution of Georgia prescribe as the qualifications of Representatives in the Georgia House of Representatives,

"8. How does the Constitution of the United States provide that it may be amended?

[fol. 12] "9. Who is the Chief Justice of the Supreme Court of Georgia and who is the Presiding Justice of that court?

"10. Who may grant pardons and paroles in Georgia?

"11. Who is the Solicitor General of the State Judicial Circuit in which you live and who is the Judge of such Circuit? (If such Circuit has more than one Judge, name them all.)

"12. If the Governor of Georgia dies, who exercises the executive power, and if both the Governor and the person who succeeds him die, who exercises the executive power?

"13. (a) What does the Constitution of the United States provide regarding the suspension of the privilege of the writ of Habeas Corpus? (b) What does the Constitution of Georgia provide regarding the suspension of the writ of Habeas Corpus?

"14. What are the names of the persons who occupy the following State offices in Georgia?

(1) Governor
(2) Lieutenant Governor
(3) Secretary of State
(4) Attorney General
(5) Comptroller General
(6) State Treasurer
(7) Commissioner of Agriculture
(8) State School Superintendent
(9) Commissioner of Labor

"15. How many Congressional Districts in Georgia are there and in which one do you live?

"16. What is the term of office of a United States Senator?

"17. What is the term of office of a State Senator?

"18. What is the county site of your county?

"19. How does the Constitution of Georgia provide that a county site may be changed?

"20. What are the qualifications for jury service in Georgia?

"21. What are the names of the persons who occupy the following offices in your county?

(1) Clerk of the Superior Court
(2) Ordinary
(3) Sheriff

[fol. 13] "22. How may a new state be admitted into the Union?

"23. On what day and how often is the general election held in Georgia at which members of the General Assembly of Georgia are elected?

"24. What does the Constitution of the United States provide regarding the right of citizens to vote?

"25. In what Federal Court District do you live?

"26. What are the names of the Federal District Judges of Georgia?

"27. Who are citizens of Georgia?

"28. What is treason against the State of Georgia?

"29. In what body does the Constitution of the United States declare that the legislative powers granted in such Constitution shall be vested?

"30. How many electoral votes does Georgia have in the electoral college?"

"Section 31. • • •

"Any other provision of this law to the contrary, notwithstanding, no challenge as provided in this section shall be valid as to a person who has registered to vote prior to the effective date of this law on the grounds that such person does not come within either of the classes provided in the two subdivisions of Paragraph IV of Section 1 or Article II of the Constitution of Georgia."

[fol. 14-15] EXHIBIT B TO COMPLAINT

EXTRACTS FROM GEORGIA CODE OF 1957 BY TITLE AND SECTION

34-121. Oral examination of applicants on standard questions.—The examination which registrars shall submit to those persons who claim the right to register and vote on the basis of good character and understanding of the duties of citizenship under a republican form of government shall be based upon a standard list of ques-

tions, and the questions on this list and no others shall be submitted to each applicant. In each instance where an applicant in this category is examined, the registrars shall keep a record of the questions submitted and the answers given and file the record thus made with the registration card. In order to ascertain whether an applicant is eligible for qualification as a voter in this classification, the registrars shall orally propound to him the 30 questions on the standardized list set forth in the following section. If the applicant can give factually correct answers to 10 of the 30 questions as they are propounded to him, then the registrars shall enter an order declaring him to be prima facie qualified. If he cannot correctly answer the 10 out of the 30 questions propounded to him, then an order shall be entered rejecting his application. (Acts, 1949, pp. 1204, 1212.)

34-122. Procedure on oral examination; standard list of questions.—The registrars shall procure an ample supply of cards or sheets of paper on which shall be printed the standard list of questions set forth below. One of such cards or sheets of paper shall be used in the oral examination of each applicant who seeks qualification as a voter in the classification set forth in the preceding section. The cards shall show in one column the correct answers to the questions, and the answers of the applicant shall appear in a parallel column, so that each question, the correct answer thereto and the applicant's answer will all appear on the same line. If the answer of the applicant to a given question is correct, this fact may be indicated by a check in the applicant's answer column; if the answer is incorrect, the answer of the applicant should be written in said column. It shall be [fol. 16] the duty of the registrars to see to it that the answers in the column showing the correct answers are revised from time to time so that the correct answers will appear in the appropriate column at the time each applicant is examined. The standard list of questions and the present correct answers thereto and the form to be used under this and the preceding section is as follows:

Standard List of Questions

(To be propounded to those seeking to register and qualify as voters under Article II, Section I, Paragraph IV, Subparagraph I of the Constitution [§ 2-704 (1)].)

Date of Examination.....

Name of Applicant .....

Address of Applicant .....

Questions	Answer	Answer of Applicant
1. Who is President of the United States?	Name Incumbent	
2. What is the term of office of the President of the United States?	Four years	
3. May the President of the United States be legally elected for a second term?	Yes	
4. If the President of the United States dies in office, who succeeds him?	Vice President	
5. How many groups compose the Congress of the United States?	Two—The Senate and House of Representatives	
6. How many United States Senators are there from Georgia?	Two	
7. What is the term of office of a United States Senator?	Six Years	
8. Who are the United States Senators from Georgia?	Name Incumbent	
9. Who is Governor of Georgia?	Name Incumbent	
10. Who is Lieutenant Governor of Georgia?	Name Incumbent	

Questions	Answer	Answer of Applicant
[fol. 17] 11. Who is Chief Justice of the Supreme Court of Georgia?	Name Incumbent	
12. Who is Chief Judge of the Court of Appeals of Georgia?	Name Incumbent	
13. Into what two groups is the General Assembly of Georgia divided?	Senate and House of Representatives	
14. Does each Georgia County have at least one representative in the Georgia House of Representatives?	Yes	
15. Do all Georgia counties have the same number of representatives in the Georgia House of Representatives?	No	
16. In what city are the laws of the United States made?	Washington, D.C.	
17. How old do you have to be to vote in Georgia?	18 years old	
18. What city is the capital of the United States?	Washington, D.C.	
19. How many states are there in the United States?	48	
20. Who is the Commander-in-Chief of the United States Army?	The President of the United States	

(The following questions requiring a different answer according to the localities in which the applicant lives, the registrars in printing this list will insert under the

column headed "Correct Answer" the correct answer to each question.)

Questions	Correct Answer	Answer of Applicant
21. In what Congressional District do you live?		
22. Who represents your Congressional District in the National House of Representatives?		
23. In what State Senatorial District do you live?		
24. Who is the State Senator that represents your Senatorial District?		
25. In what County do you live?		
[fol. 18] 26. Who represents your County in the House of Representatives of Georgia? If there are more than one representative, name them.		
27. What is the name of the County seat of your County?		
28. Who is the Ordinary of your County?		
29. Who is the Judge of the Superior Court of your circuit? If there are more than one, name one additional Judge.		
30. Who is the Solicitor-General of your circuit?		
Total Correct Answers		

The registrars shall keep a reasonable supply of extra copies of the question and answer blanks and distribute them to any member of the public who may request copies. (Acts 1949, pp. 1204, 1213.)

[fols: 19-20] * * *

[fol. 21] IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA
AMERICUS DIVISION

(File Endorsement Omitted)

(Title Omitted)

MOTION TO DISMISS UNDER RULE 12 B OF THE FEDERAL RULES OF CIVIL PROCEDURE—Filed Sept. 23, 1958

The defendants move the Court as follows:

(1)

To dismiss the action because the complaint fails to state a claim against the defendants upon which relief can be granted.

(2)

To dismiss the action because it does not affirmatively appear therefrom that the United States of America had any legal right to commence it, or that the United States of America has any legal right to prosecute it.

(3)

To dismiss the action because it does not affirmatively appear therefrom that the defendants have engaged, or there are reasonable grounds to believe that the defendants are about to engage, in any act or practice which would deprive any person of any right or privilege [fol. 22] secured by sub-sections (a) and (b) of Title 42, Section 1971 of the United States Code.

(4)

To dismiss the action on the ground that the Court lacks jurisdiction for that:

(a) In the absence of the Civil Rights Act of 1957, and those portions of it, codified as Title 42, Section 1971 (c) and (d), United States Code,

the United States of America could not possibly have had any right to commence and prosecute this action;

(b) No provision of the Civil Rights Act of 1957 authorizes the United States of America to commence and prosecute this action, for the rule, unchanged by the Civil Rights Act of 1957, is that whether a person, resident of and a citizen of Georgia, is entitled to be registered for the purpose of voting is determined solely by weighing his or her qualifications and disqualifications by standards outlined in the Constitution and Statutes of Georgia, and the question of alleged unconstitutional discrimination in registration cannot be determined by classes or groups of individuals as this action attempts to do, but must be determined as to each individual.

(5)

To dismiss the action on the ground that the Court lacks jurisdiction for that even under the Civil Rights Act of 1957, a suit may not be instituted in the name of the United States for preventive relief to a group or class of persons.

[fol. 23]

(6)

To dismiss the action on the ground that the allegations of the complaint and the applicable law, even if the applicable law plead is constitutional, do not warrant the relief sought.

(7)

To dismiss the action on the ground that it does not seek preventive relief, but seeks with respect to the only persons named therein to have the Court review and reverse past decisions of the Board of Registrars of Terrell County, Georgia, as to the eligibility of the alleged citizens of the United States to register under Georgia registration statutes. Therefore the action is not within the purview of Part IV of the Civil Rights Act of 1957 (42 United States Code, 1971(c)).

(8)

To dismiss the action on the ground that those provisions of Part IV of the Civil Rights Act of 1957, now codified as Sections 1971(c) and (d) of Title 42 of United States Code, are unconstitutional and void, and exceed the legislative powers delegated by the States to the Congress of the United States, in that the aforesaid provisions purport to authorize the institution of an action by the United States of America in the District Courts of the United States, which action is not within the scope of the judicial powers delegated by the States to the United States by the Constitution of the United States, which provides that "the judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States and Treaties made, or which shall be made under their Authority . . ."

The proceeding sought to be authorized by the statute aforesaid is not such a case in Law and Equity as was and is contemplated or authorized by the Constitution of the United States.

[fol. 24]

(9)

To dismiss the action because as brought it is not one cognizable by the Courts of the United States under the judicial power delegated by the States to the United States. The action is not a case, in Law or Equity, arising under the Constitution or Laws of the United States, or any treaty made under their authority.

(10)

To dismiss the action because even if Part IV of the Civil Rights Act of 1957 should be held constitutional, even if the actions should be held to be a case, in Law and Equity, arising under the statute, even if the relief sought in the action is held to be within the purview of such action as is authorized by the statute, even if equitable power has been constitutionally delegated to the Court, the Court has the discretionary power to refuse to exercise that equitable power and so interfere with functions which are historically reserved to the States under Article II in Amendment 10 of the Constitution, and this

honorable Court should therefore refuse to entertain the action and grant relief sought.

(11)

To dismiss the action because:

(a) That portion of the Civil Rights Act of 1957 which is now codified as Title 42, Section 1971 (a), is unconstitutional and void, and beyond the powers of Congress to enact, in that it is too comprehensive as an exercise of legislative power under the 15th Amendment to the Constitution of the United States, and no other provision of or Amendment to the Constitution of the United States would authorize Congress to enact that portion of the Civil Rights Act of 1957;

[fol. 25] (b) It is not alleged that any of the defendants are intimidating, threatening, coercing, or attempting to intimidate, threaten or coerce any other person for the purpose of interfering with the right of such other person to vote, or to vote as he may choose, or of causing such other person to vote for or not to vote for, any candidate for the office of President, Vice President, Presidential elector member of the Senate or member of the House of Representatives, delegates or commissioners from the Territories or Possessions, at any general, special or primary election held solely, or in part, for the purpose of selecting or electing any such candidate. Therefore, the Attorney General had not the power under Section 1971 (c) of Title 42 of the United States Code to institute for or in the name of the United States this action or proceeding.

(12)

To dismiss the action because by reason of the allegations in Paragraph 9 of the complaint, and the relief based thereon sought in Paragraph 19 of the complaint, and especially in sub-paragraph (2) of said Paragraph 19, the action is one against the State of Georgia, for-

bidden by the 11th Amendment to the Constitution of the United States which provides that the judicial powers of the United States shall not be construed to extend to any suit in Law or Equity, commenced or prosecuted against any one of the United States.

[fol. 26] (13)

To dismiss the action because Part IV of the Civil Rights Act of 1957 is unconstitutional and void as being contrary to the 10th Amendment to the Constitution of the United States for that in it the Congress of the United States through the Courts of the United States seeks to exercise functions which were reserved to the States under the aforesaid 10th Amendment.

/s/ Charles J. Bloch
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Attorneys for Defendants

[fol. 27] * * *

[fol. 28] IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA
AMERICUS DIVISION

(File Endorsement Omitted)

(Title Omitted)

ORDER OF THE COURT AS TO DEFENSIVE PLEADINGS—Sept. 29, 1958

It appears to the Court:

1.

That the complaint in this case was filed September 4, 1958 and served September 8, 1958, and therefore defendants have until September 29, 1958 to file defensive pleadings (September 28th being a Sunday) (Rule 6(a));

2.

On September 22, 1958, the defendants filed a motion to dismiss under Rule 12(b), setting up that the complaint failed to state a claim against them upon which relief can be granted, for various reasons therein set out, and upon the further ground that the court lacked jurisdiction, for several reasons therein set out;

3.

No responsive pleading other than the aforesaid motion to dismiss has been filed;

It is, thereupon, Considered, Ordered and Adjudged, that no further responsive pleading or answer need be [fol. 29] filed or served by the defendants until some action has been taken by the court on the motion to dismiss, and if the court should deny the motion or postpone its disposition until the trial on the merits, respon-

sive pleadings shall be served within ten days after notice to the defendants' counsel of the court's action.

This September 29, 1958.

/s/ T. Hoyt Davis
United States Judge

Presented by:

/s/ Charles J. Bloch
Of Counsel for Defendants

[fols. 30-31] * * *

[fol. 32] IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA
AMERICUS DIVISION

Civil Action No. 442

UNITED STATES OF AMERICA, PLAINTIFF

v.

JAMES GRIGGS RAINES, DIXON OXFORD, ROSCOE RADFORD, Registrars of Terrell County, Georgia, F. LAWSON COOK, SR. and MRS. F. LAWSON COOK, SR., Deputy Registrars, Defendants

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OPINION—Filed: April 16, 1959

Appearances:

For *Government:*

W. WILSON WHITE,
Asst. Attorney General,
Washington, D. C.

FRANK O. EVANS,
United States Attorney, Macon, Ga.

BEN BROOKS,
Attorney, Department of Justice,
Washington, D. C.

For *Defendants:*

BLOCH, HALL, GROOVER & HAWKINS
520-25 First National Bank Bldg.
Macon, Georgia.

CHARLES J. BLOCH and
ELLSWORTH HALL, JR., of counsel.

PETER ZACK GEER,
Colquitt, Georgia.

ROBERT L. RUSSELL, JR.
Winder, Georgia.

[fol. 33] DAVIS, DISTRICT JUDGE:

This is an action instituted by the Attorney General of the United States in the name of and on behalf of the United States under the provisions of the Civil Rights Act of 1957. The complaint is one seeking preventive relief against the alleged deprivation of voting rights of certain named persons on account of their race or color. The action is brought against James Griggs Raines, Dixon Oxford, Roscoe Radford, Registrars of Terrell County, Georgia, F. Lawson Cook, Sr., and Mrs. F. Lawson Cook, Sr., Deputy Registrars of Terrell County, Georgia. It is alleged that these Defendants have engaged in wrongful acts and practices, which will deprive otherwise qualified persons of the right to vote because of their race or color. No attack is made upon any State law, but rather, it is alleged that the wrongful deprivation of voting rights will result from the improper and wrongful administration of the Georgia Registration laws by the named Defendants. It is against [fol. 34] this allegedly wrongful administration of the registration laws that this complaint seeks relief.

The complaint was filed on September 4, 1958. On September 23, 1958, a motion to dismiss said action was filed on behalf of all named Defendants. This motion was set down for hearing in Americus, Georgia, on January 26, 1959. Briefs were subsequently filed by counsel for all parties. Reply briefs and supplemental briefs were likewise filed. The Court has given careful consideration to the pleadings, oral arguments and extensive and exhaustive briefs filed with the Court.

The motion to dismiss is based primarily upon four main grounds. The first is the unconstitutionality of the section authorizing the Attorney General to file this action. This contention is grounded on two arguments. The Defendants argue that the sections involved are not appropriate legislation within the meaning of Section 2 of the Fifteenth Amendment to the Constitution of the United States. Secondly, they urge that Congress had no authority to authorize the Attorney General to file a suit of this nature, since it is neither an action in law

or equity. This deals in part with the authority of Congress to authorize the grant of an injunction without regard to exhaustion of other available remedies. The second main ground of the motion to dismiss is the failure of the complaint to state a cause of action under the Civil Rights Act of 1957, even if constitutional. The third ground asserts that the cause should be dismissed [fol. 35] by the Court in the exercise of its sound discretion. Because of the Court's ultimate judgment in this matter and to facilitate clarity of presentation, these grounds will be considered in reverse order.

In the third ground of their motion, the Defendants argue that the Court should exercise its discretion and deny the relief sought, even though it be decided that the Act under which it is brought is constitutional and the complaint states a cause of action under the statute. In support of this ground, it was pointed out that no emergency existed, such as that contemplated by Congress when this Act was enacted. Though a general election was held in Georgia in November, 1958, this complaint did not seek a temporary restraining order, or any other remedy which might have enabled the allegedly wronged parties to vote in that election. It seeks instead to secure an injunction at a time when the next scheduled election is over a year in the future. The Defendants argue that the State can afford the desired remedy prior to any election and that no such emergency exists as would justify this Court's intervention.

While some of the language of the Congressional hearings does indicate that this remedy was primarily designed for emergency use, the wording of the statute imposed no such limitation. This Court cannot so limit the applicability of the statute. Similarly, the failure of the complaint to seek such relief as might have protected the voting rights of the allegedly wronged parties prior to the November election does not impede the oper- [fol. 36] ation of the statute. It may raise some question as to the motive of the litigation, but the Court without hearing any of the evidence would not be disposed to dismiss the proceedings in the exercise of its discretion. It is true that equitable relief may be denied in the exercise of the Court's discretion, but it should be a

discretion informed by evidence. The Court is of the opinion that, based on the complaint alone, it is not in possession of sufficient facts to dismiss the complaint in the exercise of its sound discretion.

The Court next comes to a consideration of the question of whether or not this complaint states a cause of action under the provisions of 42 USC 1971. The complaint alleges that the Defendants, as individuals, acting in the exercise of their state given authority as registrars and deputy registrars of Terrell County, Georgia, engaged in certain acts and practices, designed and intended to deny otherwise qualified persons the right to vote because of their race and color. It is alleged that they delayed handling of Negro applications for registration, arbitrarily refused to register Negroes who demonstrated their qualification to vote, and for purposes of discrimination, applied more difficult and stringent registration standards to Negro applicants than to white applicants.

It is further alleged that registration is a legal prerequisite to voting in Georgia, and that this discrimination in administration of registration procedures was on account of the race of the applicants.

There can be no question but that these allegations [fol. 37] are sufficient to bring the allegedly wrongful conduct of the Defendants within the coverage of 42 USC 1971. Whether that statute be construed as one limited to state action, as argued by the United States, or as extending to purely individual action, as contended by the Defendants, the language of the complaint would state a cause of action. It alleges that these Defendants have engaged in certain acts or practices which will deprive others of their right to vote, when otherwise qualified, without distinction as to race or color. The acts and practices alleged are those of the Defendants while acting (even though wrongfully) in the exercise of state given authority. Thus, under any reading of the statute, the facts alleged make out a cause of action.

So it is, that this is not a case such as Collins v. Hardyman, 341 U. S. 651, where the Court can avoid the question of constitutionality. Having determined that none of the other grounds of the Motion to Dismiss

are valid, the Court now passes to the final and most important point raised by that motion; to-wit, the constitutionality of the Act under which this action is brought.

The first prong of the constitutional attack on the statute questions the authority of Congress to authorize the Attorney General to bring an action in this Court, which is neither an action in law or equity. It is urged that this is not a legal action, seeking as it does injunctive relief. On the other hand, it is argued that it is not an [fol. 38] equitable action, since it violates one of the oldest rules of equity, the unavailability of the injunctive process where other legal remedies are available. The Defendants thus contend that this is neither a suit in law or equity, and that Congress had no right to authorize it. This Court cannot accept this contention.

While a court may question the wisdom of overruling an old and well established maxim of equity, the Court knows of no limitation on the powers of Congress to legislate in this field. The fact that Congress in subsection (d) of Section 1971 provided that the courts shall exercise that jurisdiction "without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law", does not change the nature of this action from one in equity. It merely provides that in such an equitable proceeding a certain well established principle shall not be applicable. The Court knows of no limitation on the right of Congress to so legislate. It is well known that the Federal Courts have often refused to act because the complainants had failed to exhaust their other remedies. Peay v. Cox, 190 F. 2nd, 123, 125 (5th Cir.). This rule, however, could hardly be applied where Congress has expressly directed the courts to exercise their jurisdiction without regard to such fact.

The Defendants contend that such a limitation of the court's exercise of their jurisdiction is an invasion by the legislative branch of matters properly committed to the judicial branch and thus violative of the separa- [fol. 39] tion of powers doctrine. The Court is far from convinced as to the soundness of this argument, but has not explored it extensively because it does not seem

necessary, in view of the ultimate disposition of this motion.

This brings us, finally, to what appears to be the most substantial contention of the Defendants; that is, that 42 USC 1971 is not appropriate legislation within the meaning of Section 2 of the Fifteenth Amendment and exceeds the jurisdiction of the Congress.

It should be noted at the outset that this action is one brought by the Attorney General in the name of and on behalf of the United States. It is not an action by the allegedly wronged party under the provisions of 42 USC 1983, and differs materially from those cases. In that type of case, the "self executing ban" of the Fifteenth Amendment proscribes certain conduct and Section 1983 provides a remedy therefor, without resort to 42 USC 1971. It was the availability of this "self executing ban" which has heretofore allowed the Supreme Court to apparently by-pass a clear ruling on the constitutionality of Section 1971-(a). Terry v. Adams, 345 U. S. 461, 481.

In the instant case, however, the Attorney General has no standing for the bringing of this action, except the recently enacted provisions of Section 1971. Any right that he has to seek preventive relief, where citizens allegedly have been or are about to be denied their right to vote on account of race, is based on Section 1971(c). Prior to its enactment, such an action could not have [fol. 40] been entertained. Thus, it is that the question of the constitutionality of that Section cannot be sidestepped or by-passed. Due to the wording of sub-section (c) of the statute and the way in which it is tied to subsection (a), the latter must also be given its first really critical examination.

As originally enacted and as it remained on the statute books of this country from 1870 until 1957, the present sub-section (a), (formerly Section 1971 in its entirety), was merely a general statement of principle or of rights, without providing any sanction or remedy for its violation. U. S. v. Reese, 92 U. S. 214; U. S. v. Cruikshank, 92 U. S. 542. For this reason, no action could ever be based upon this section alone. Many actions were filed under Sections 1983 and 1971, relying also on the Fifteenth Amendment. It will be noted that in any suit

filed under Section 1983, there could be no question such as is here presented, since Section 1983 is applicable only to persons acting "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory." By its unmistakably clear language, Section 1983 did not authorize any action for purely private acts, even though such practices resulted in a person being deprived of the right to vote on account of his race.

This brings into focus the question which is now presented for determination by this Court. Under Section 1971 as passed in 1957, is the Attorney General permitted to institute proceedings for preventive relief, where [fol. 41] the alleged wrongful deprivation is that of a private citizen, not a state officer, not acting under color of any state law, custom or usage?

In considering this question, we must close our mind to the allegations of the complaint in the instant case. The question is, not what the Attorney General has done here, but what Congress has authorized him to do. As was clearly demonstrated in the case of United States v. Reese, et. al., 92 U. S. 214, where a statute is enacted in general terms sufficiently broad to apply to wrongful acts, outside as well as within the constitutional jurisdiction of Congress, such a statute cannot be limited by judicial construction so as to make it operate only on that which Congress might rightfully prohibit. "To limit this statute in the manner now asked would be to make a new law, not to enforce an old one." *Ibid.* It is well to note that the Supreme Court was there considering one section of the Act of 1870, of which Section 1971(a) was a part.

Thus, it is not for this Court to decide whether this particular fish is properly within the net, but whether the net is so large as to catch many fish not properly within it.

It is clear beyond question, that the Fifteenth Amendment to the Constitution relates "solely to action by the United States or by any State, and does not contemplate wrongful individual acts." James v. Bowman, 190 U. S. 127. The statute which is here under consideration, as did the one in the above cited case, "on its face . . . purports to be an exercise of the power granted to

[fol. 42] Congress by the "Fifteenth Amendment. The government of the United States is one of delegated, limited, and enumerated powers. Therefore, every valid act of Congress must find in the Constitution some warrant for its passage." U. S. v. Harris, 106 U. S. 629. The power of Congress to legislate at all upon the subject of voting at State elections rests upon the Fifteenth Amendment. Prior to its enactment there was no constitutional guaranty against discrimination on account of race, color or previous condition of servitude. U. S. v. Reese, et. al., 92 U. S. 214.

Thus, it will be seen that, if Section 1971(c) is constitutional, it is because of the power given Congress by the Fifteenth Amendment. As stated, that Amendment relates solely to action by the United States or by any State and does not contemplate wrongful individual acts. The Court is mindful, of course, of the cases holding that a state acts through its lawfully constituted officials and that action by one exercising his state given authority (even though wrongly exercising it) constitutes state action. Thus, for present purposes, it will be assumed that the Fifteenth Amendment authorizes Congress, by appropriate legislation, to prohibit and punish deprivation of voting privileges on account of race or color by any State or by the officers of any State while in the exercise of state given authority. It does not, however, authorize Congress to prohibit or punish purely individual and private action depriving another of his right to vote on account of his race or color.

[fol. 43] This brings us to the meat of the controversy here: What does Section 1971(c) seek to do? Is it limited to state action, as previously defined, or is it sufficiently broad to encompass wrongful action by individuals?

In determining the scope of Section 1971(c), the Court must first consider the language of that section. Is there any limitation within the section itself? The section, as enacted in 1957, reads, as follows:

> "Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege

secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person."

42 U. S. C. 1971 (c)

It will be noted at the outset that the section itself includes no limitation as to the persons subject to suit under it. It includes *any person* engaging in or about to engage in a certain type of conduct. By its own terms the section is applicable to any person engaging in the type of action described therein. Thus, it follows that the only limitation, if any there be, must come from the act or practice described therein. In other words, any person capable of engaging in the type of act or practice described would be subject to suit by the Attorney General. If any person other than one clothed with state authority can engage in such act or practice, then the section is broad enough to allow suit against him and is [fol. 44] not limited to state action. It will be particularly noted that the section makes no reference to color of law, a phrase with which the Congress is very familiar, having used it in other sections of this, as well as other Civil Rights Acts. More will be said about this later.

Now, what is the proscribed act or practice which brings this section into play? It is not any act or practice which would deprive another of his rights under the Fifteenth Amendment. If that were the language, there could be no doubt about its limitation to state action, since a private citizen acting individually cannot deprive another of his rights under the Fifteenth Amendment. As argued in James v. Bowman, 190 U. S. 127, 135, a statute in such general language aimed only at such acts as deprived another of whatever rights he had under the Fifteenth Amendment, could not be unconstitutional. It would just be up to the Courts then to determine in each case whether or not the statute applied to the conduct alleged in the complaint. The statute itself would proscribe only that which violated the Amendment. Any

set of facts falling short of a violation of the Amendment would not state a cause of action under the statute.

Here, however, Congress did not so limit the statute. The action proscribed therein is "any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section." Again we come to the question: Can any person other than one clothed with the authority of the State [fol. 45] engage in such an act or practice? To properly determine that, we must first determine what rights and privileges are secured by subsection (a) of Section 1971. (All parties concede that subsection (b) is not here involved).

Subsection (a) of 42 USC 1971 was originally passed in 1870, as a part of what was known as the Enforcement Act, consisting of 23 sections. It was enacted soon after the adoption of the 14th and 15th Amendments. It was in some respects a sort of preamble to the Enforcement Act, in that it merely stated a right or privilege, while the sections that followed it sought to establish remedies for specific violations of civil rights. The section, as originally enacted, was re-enacted in 1957 as subsection (a) of Section 1971. Theretofore it had been the entire section.

The subsection reads, as follows:

> "All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding." 42 U. S. C. 1971 (a).

Now, what is the right or privilege secured by this subsection? In this Court's opinion, it is the right and privilege of all persons otherwise qualified to vote to be entitled and allowed to vote, without distinction of race or color and to effectuate this right all state constitu- [fol. 46] tional provisions, laws, customs, usages and regulations to the contrary are expressly set aside.

But, this right to be entitled and allowed to vote, as stated, is not simply the right to be free of state interference but is the right to be free of interference from any source on account of one's race or color. It may be that the word "entitled", as used, carries with it some idea of state action only, since entitlement to vote can come from the state alone and can be denied only by the state, acting through its officials. Entitlement is a legal status, which can neither be conferred nor denied by a private citizen. But, the phrase "allowed to vote" carries with it no such idea of state action or legal status. It denotes the physical action of voting and it may be interfered with or denied to another by any person, state official or private citizen. A person who is kidnapped at the polls and spirited away has been denied his right to be allowed to vote. One who is prevented from voting through threats or intimidation has been denied his right to be allowed to vote, just as completely as if the poll manager had refused to accept his ballot. It thus appears to this Court that the right secured by this subsection is such a right of which a person can be deprived, by the act or practice of any other person, state official or private citizen.

This view is strengthened by a look at the other provisions of the Enforcement Act of 1870, of which this subsection, verbatim, was the first section. As previously stated, it was a sort of preamble to that Act, in that it [fol. 47] stated general principles while the following sections contained the "teeth".

The Court feels that it is, therefore, proper to consider the fact that in Section Five of the Enforcement Act of 1870, Congress made it a crime for any individual to hinder, control or intimidate others by bribery or threats from exercising their right of suffrage guaranteed by the Fifteenth Amendment. While this section was declared unconstitutional in the case of James v. Bowman, 190 U. S. 127, on the same grounds here urged, and is no longer on the books, it does have some bearing, in that it reflects the thinking of the Congress which originally enacted this legislation. In this Court's opinion, the imposition of a criminal sanction, for purely private and individual action, indicates that the previous

general statement of principle and rights was sufficiently broad to include the right to be free from private as well as state interference.

It is of interest to note that Sections Three, Four and Five of the Act of 1870 have since been declared unconstitutional as in excess of the jurisdiction conferred upon Congress by the Fifteenth Amendment. This, to say the least, waters down considerably any presumption that Congress on this occasion was acting within the scope of its legislative authority. Any such presumption is further weakened by the principle that the Government of the United States, being a government of limited and enumerated powers, every valid act of Congress must find in the Constitution some warrant for its passage. U. S. v. Harris, 106 U. S. 629, 636.

[fol. 48] In carefully scrutinizing this passage, in order to determine whether the right therein declared is limited to the right to be free from state discrimination, the Court is impressed with the reasoning of the dissenting opinion of Justices Burton, Black and Douglas, in the case of Collins v. Hardyman, 341 U. S. 651, 663, 664, wherein it was stated: "The language of the statute refutes the suggestion that action under color of state law is a necessary ingredient of the cause of action which it recognizes. R. S. Sec. 1980(3) speaks of 'two or more persons in any State or Territory' conspiring. That clause is not limited to state officials. Still more obviously, where the section speaks of persons going 'in disguise on the highway . . . for the purpose of depriving . . . any person or class of persons of the equal protection of the laws', it certainly does not limit its reference to actions of that kind by state officials. When Congress, at this period, did intend to limit comparable civil rights legislation to action under color of state law, it said so in unmistakable terms."

It is the opinion of this Court that this statement applies with equal force to subsections (a) and (c). In 1870, when (a) was first enacted, and in 1957 when (c) was enacted, Congress in other and similar legislation demonstrated its ability to limit such legislation to state officials by the use of clear and unequivocal language. The term "under color of law" was employed in sub-

section (b) of the Act of 1957. Other sections of the Act of 1870 employed the phrase "whenever, by or under the authority of the constitution or laws of any State . . .".

[fol. 49] It is interesting to note, in this connection, that the complaint of the United States in this case defines the rights and privileges secured by subsection (a) of the statute in Paragraph One, in the following language: "the right and privilege of citizens of the United States who are otherwise qualified by law to vote at any election by the people in the State of Georgia to be entitled and allowed to vote at all such elections without distinction of race or color."

This statement of the right secured completely omits any reference to state constitutions, laws, usage, custom or regulations. The right is similarly defined in the majority report of the House Committee which recommended passage of the Act. House Report No. 291, U. S. Code Congr. and Admin. News, 85th Cong., 1st Sess., 1957, p. 1977.

The language of the subsection following the semicolon; to-wit: "any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding", was not intended to qualify and limit all that had gone before it in the section. To so hold would mean that even direct and positive state action of discrimination in voting rights on account of color could not be reached under this statute, unless the state action was based on some constitutional provision, law, custom, usage or regulation. Clearly, this was not intended when the section was reenacted by Congress in 1957. This point is supported by the testimony of Attorney General Brownell during [fol. 50] the House Hearings on the Civil Rights Act of 1957, wherein he stated:

"For example, if you have a registrar of voters who arbitrarily strikes off several thousand names of Negro voters shortly before the deadline for qualification of voters and gives no hearing to them or an inadequate hearing, then I would think that would be a case that would alert the Attorney General under this bill to the need for some injunctive action, which would give those

people their day in court and allow them, like any other citizen, the right of franchise." Hearings of Subcommittee of House on the Civil Rights Act of 1957, Serial No. 1, p. 601.

Clearly, it could not be argued that such conduct by one registrar in contravention of state law was based on any constitutional provision, statute, usage, custom or regulation. An isolated example could hardly be termed a state custom or usage. Congress did not intend to so limit the application of this section. If it was not an absolute limitation as written, it could hardly be reworded by the courts to limit the section to a deprivation of voting rights by state officials only.

It may be argued, and has been, that the reliance on this section over the years proves its constitutionality. In viewing this contention, it must be remembered that this section was in no wise remedial. It was relied upon only in cases brought under remedial statutes, which included the term "under color of statute, ordinance, regulation, custom, or usage, of any State or Territory", and other similar language. When the two sections were construed together, they clearly did not provide any [fol. 51] remedy against private, individual action. Thus, there was no reason for any attack on subsection (a). Now, however, Congress seeks to tie together two sections, neither of which is limited to state action or action by state authority. This it cannot do. When linked with a remedial statute properly limited, subsection (a) is harmless. But, when linked, as here, with a remedial section which uses the phrase "any person", it renders the remedial section beyond the jurisdiction of Congress and unconstitutional.

Subsection (c) creates a remedy against purely private, as distinguished from state, deprivation of voting rights on account of race or color. The fact that the instant case is a suit against state officials cannot alter the scope of the statute. This illustrates the danger of this type of legislation, which danger was recognized as early as the case of United States v. Reese, et. al., 92 U. S. 214. There the Court held: "We are, therefore, directly called upon to decide whether a penal statute enacted by Congress, with its limited powers, which is in general lan-

guage broad enough to cover wrongful acts, without as well as within the constitutional jurisdiction, can be limited by judicial construction, so as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose, we must take these sections of the statute as they are. We are not able to reject a part which is unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is [fol. 52] not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there." It is true that there the Court was dealing with a penal statute. Here we are dealing with a statute authorizing an injunction, violation of which may carry its own penalty. The same principle would seem applicable.[1] When a person is enjoined from violating a statute, he is entitled to know what that statute proscribes, without awaiting the finality of an authoritative court opinion.

As stated in the Reese case, supra: "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large."

That this is exactly what this section seeks to do is demonstrated by the testimony of Attorney General Brownell in the Senate Hearings before the Subcommittee on Constitutional Rights while considering the Civil Rights Act of 1957. On Page 25 of those Hearings, Mr. Brownell testified: "These sections 4 and 5" (subsections (c) and (d) of the law as enacted) "are added here as

[1] During the Subcommittee hearings on the Civil Rights Act of 1957, Senator Ervin made the following remark: ". . . if Congress has no power to provide any criminal penalties for those acts under the Constitution because it has no right to legislate in that particular area, it certainly would have no right to enact a civil law."

To which Mr. Brownell replied: "That is correct, and we are not asking for it." The difference between the type of remedy provided would not seem to alter the right of Congress to legislate with reference to it. Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, February 14, 1957, p. 25.

[fol. 53] machinery to enforce whatever "the constitutional authority of the Federal Government may be in this area, and does not add to the substantive provisions of the statute."

Again, at page 51, he testified: ". . . our guiding principle will be that only those statutes, parts of statutes that are constitutional, would be enforced by us, and we would not act in any way contrary to a Supreme Court opinion which holds that a statute or any part thereof that is unconstitutional." This indicates that the statute as written is sufficiently broad to include unconstitutional matter, but that the Attorney General expressed his intention of administering it in such a way as to seek no unconstitutional relief. While this is a noteworthy sentiment, the tenure of the Attorney General being what it is, the Courts can hardly rely on his intentions as to the administration of an act which in itself would support the grant of unconstitutional relief, if requested.

The Court has explored this question with particularity, because it is not unmindful in the least of the seriousness of the problem. This Court has never and shall never condone wrongful deprivation of the constitutional rights of any person by a state official or a private citizen. On the other hand, this Court is also sensitive to the dual sovereignty system of government under which we operate and is sincerely devoted to its preservation.

It is this Court's considered opinion that this statute would allow the Attorney General to seek an injunction against a private citizen for an individual act, divorced completely from state action. It is the province of the several states to protect the rights of one citizen against [fol. 54] against the wrongful practices of another person. James v. Bowman, 190 U. S. 127. Congress should not be allowed to extend the authority of the Federal Government into this field. This it has tried to do. The Court is of the opinion that, if Congress intended only to authorize the Attorney General to enjoiin or seek preventive relief against wrongful state action, it could easily have been accomplished, without resort to such confused legislation. Similar, if Congress wishes to leave the court some latitude in determining what may and what may not be enjoined, this may be accomplished

by tying the remedy directly to the Fifteenth Amendment, rather than to another section, the constitutionality of which is far from clear.

For the reasons set forth above, the Court concludes that Section 1971(c) of Title 42 is beyond the jurisdiction of Congress and unconstitutional. It is not appropriate legislation within the meaning of Section 2 of the Fifteenth Amendment to the Constitution of the United States. There existing no other basis for an action by the Attorney General in the name of the United States seeking the remedy here sought, the motion to dismiss should be, and the same is hereby, GRANTED.

ORDERED FILED, this the 16 day of April, 1959.

T. Hoyt Davis
T. HOYT DAVIS,
United States District Judge.

[fol. 55] IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA AMERICUS DIVISION

(File Endorsement Omitted)

(Title Omitted)

ORDER DISMISSING COMPLAINT—April 16, 1959

In accordance with the opinion filed in the above stated case on this date, it is hereby ORDERED and ADJUDGED that the complaint in said cause be, and the same is hereby, DISMISSED. Costs are taxed against the United States.

This the 16th day of April, 1959.

T. Hoyt Davis
T. HOYT DAVIS,
United States District Judge.

[fol. 56] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT

Notice of Appeal to the Supreme Court of the United States—Filed April 23, 1959

I

Notice is hereby given that the United States of America, the plaintiff above named, hereby appeals to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on April 16, 1959.

This appeal is taken pursuant to the provisions of 28 U.S.C. § 1252.

II

The Clerk will please prepare a transcript of the entire record in this cause for transmission to the Clerk of the Supreme Court of the United States.

[fol. 57] III

The following questions are presented by this appeal:

1. Whether 42 U.S.C. 1971(a) and (c) (Supp. V) [P.L. 85-315, Part IV of the Civil Rights Act of 1957, 71 Stat. 637] providing for the institution of civil actions for preventive relief by the Attorney General for or on behalf of the United States is constitutional.

2. Whether 42 U.S.C. 1971(a) and (c) (Supp. V) [P.L. 85-315, Part IV of the Civil Rights Act of 1957, 71 Stat. 637] must be construed to authorize the institution of civil actions by the Attorney General against private persons not acting under color of state law.

s W. Wilson White,
Assistant Attorney General.

s Frank O. Evans,
United States Attorney.

s Ben Brooks,
Attorney, United States Department of Justice,

Attorneys for United States of America, Appellant.

Proof of Service (Omitted in Printing)

[fol. 58] * * *

[fol. 59] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT

CROSS-APPEAL OF JAMES GRIGGS RAINES, ET AL.—
Filed April 28, 1959

I.

Notice having on April 24, 1959, been given to them by the United States of America of its appeal to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on April 16, 1959, come now James Griggs Raines, Dixon Oxford, Roscoe Radford, Registrars of Terrell County, Georgia, F. Lawson Cook, Sr. and Mrs. F. Lawson Cook, Sr., Deputy Registrars, and file this their notice of cross-appeal as provided by 28 U.S.C. Section 1252.

II.

The following additional questions are presented by this cross-appeal:

1. Whether the Congress of the United States, under the Constitution of the United States, had any authority to authorize the Attorney General of the United States to institute a civil action for preventive relief for or on behalf of the United States of the nature described in 42 United States Code 1971(c), and under the circumstances therein stated;

2. Whether, even if Part IV of the Civil Rights Act of 1957 is constitutional, the complaint in this action states a cause of action under that Act, or a claim upon which the relief sought can be granted;

[fol. 60] 3. Whether, even if Part IV of the Civil Rights Act of 1957 is constitutional, and even if the complaint in this action states a claim upon which the relief sought could be granted, should the action be dismissed by the court in the exercise of its sound discretion;

4. Whether Congress has the right, under the Constitution of the United States, to direct District Courts of the United States to exercise their jurisdiction, and grant preventive relief as to acts with respect to which persons aggrieved had not exhausted their other remedies;

5. Whether the right of citizens of the United States to vote is denied or abridged by a State when voting registrars charged with the duty of administering state laws allegedly design practices of their own, and allegedly arbitrarily refuse to apply the state law;

6. Whether, if the Act is held valid, and the complaint held to state a cause of action, the District Court, in a proceeding under the Act, has the right to direct registrars to certify to the appropriate agency that certain named persons are eligible to register to vote.

/s/ Charles J. Bloch
CHARLES J. BLOCH

/s/ Ellsworth Hall, Jr.
ELLSWORTH HALL, JR.
520 First National Bank Building
Macon, Georgia
Attorneys for Cross-Appellants

PROOF OF SERVICE (Omitted in Printing)

[fol. 61] * * *

[fol. 62] *Clerk's Certificate to Foregoing Transcript Omitted in Printing

[fol. 63] SUPREME COURT OF THE UNITED STATES

No. 914 ——, October Term, 1958

UNITED STATES, APPELLANT

v.

JAMES GRIGGS RAINES, ET AL.

ORDER POSTPONING JURISDICTION—June 29, 1959

APPEAL from the United States District Court for the Middle District of Georgia.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. The case is transferred to the summary calendar.

June 29, 1959